

Application No. 10/088025  
 Amendment dated December 16, 2005  
 Reply to Office Action of August 18, 2005

Docket No.: 13311-00001-US

### REMARKS

Claims 1-18 have been cancelled, new claims 19-40 are pending. Claims 1-18 are cancelled without prejudice.

Support for the added claims can be found, for example, as follows:

Added Claims	Support in the Specification
Claim 19	Page 3, lines 29-35; page 5, lines 35-36; page 9, lines 29-39; former claims 1 and 15
Claim 20	Page 5, lines 24-27; page 9, lines 29-36; former claims 2 and 15
Claims 21, 22	Page 3, lines 29-39; page 4, lines 2-5; page 9, lines 29-36; former claims 3-4, and 15
Claims 23, 33	Page 4, lines 6-11; page 9, lines 29-36; former claims 5 and 15
Claim 24	Page 6, lines 29-37; page 9, lines 29-36; former claims 7 and 15
Claim 25	Page 5, lines 29-33; page 9, lines 29-36; page 12, lines 4-24; former claims 6 and 15
Claims 26, 27, 30, 31	Page 7, lines 34-38; page 9, lines 29-36; former claims 8, 9 and 15
Claims 28, 29	Page 5, lines 1-9; page 9, lines 29-36; page 13, lines 8-31, Figure 4; former claim 15.
Claim 32	Page 7, lines 1-14; former claims 15 and 17
Claim 34	Page 4, lines 18-39, Table 1
Claim 35	Page 8, lines 36-38; page 9, lines 29-36; former claims 10 and 15
Claim 36-38	Page 8, line 39; page 9, lines 1-27; former claims 11, 12, 15 and 18
Claim 39	Page 5, lines 29-33; page 8, line 39, page 9, lines 1-2; figure 3; former claim 11
Claim 40	Page 13, lines 8-31; figure 4

No new matter has been added.

Application No. 10/088025  
Amendment dated December 16, 2005  
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Docket No.: 13311-00001-US

### **Objections To The Claims**

The Examiner objected to the word "translator" in former claim 1. Former claim 1 has been cancelled. "Translator" was a typographical error and is not recited in the newly presented claims. In view of the above amendments, the objection is believed to be rendered moot.

### **Compliance With The Sequence Rules**

The Examiner requested that sequence identifiers be inserted in Figures 1 and 2 and that claims, specification and/or drawings be amended to insert sequence identifiers.

An amendment inserting sequence identifiers in Figures 1 and 2, in the specification and claims was previously submitted on September 13, 2002. A copy of this amendment was located in the image file wrapper in private pair and thus is of record. Applicants respectfully request that the previously submitted amendment to the Specification and Figures be entered. Applicants believe that the previously filed amendment complies with the requirements of 37 C.F.R. §§ 1.821-1.825 and respectfully request withdrawal of this objection.

### **Rejections Under 35 U.S.C. § 112, First Paragraph**

The Examiner rejected former claim 6 for new matter. Former claim 6 has been cancelled. In view of the newly presented claims, the rejection is believed to be rendered moot and is respectfully requested to be withdrawn.

### **Rejections Under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejected for indefiniteness former claim 1 for the terms "is modified" and "said modification" and former claim 6 for referencing a GenBank Accession number. Former claims 1 and 6 have been cancelled. Newly presented claims do not recite "said modification" and do not recite any GenBank Accession numbers. In view of the newly presented claims, the rejection is believed to be rendered moot and is respectfully requested to be withdrawn.

### **Double Patenting Rejection**

The Examiner provisionally rejected former claims 1-18 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1, 4-13, 16-26 of

Application No. 10/088025  
Amendment dated December 16, 2005  
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Docket No.: 13311-00001-US

copending Application No. 09/674,768. Former claims 1-18 have been cancelled. Application No. 09/674,768 does not render the newly presented claims 19-40 obvious.

Application No. 09/674,768 has now been issued as U.S. Patent No. 6,891,088 (the '088 patent) on May 10, 2005 and therefore the provisional rejection no longer applies.

Applicants advise that the '088 patent is not commonly owned with the present application and as such the double patenting rejection is inapplicable.

Furthermore, the '088 patent does not render the newly presented claims obvious because it does not teach a method of transformation of plant cells, plant tissue or plants in which changes in an ATP/ADP translocator gene in the transformed plant cells, plant tissue or plants modify amino acid content.

In view of the above remarks and further in view of the above amendments, the rejection is believed to be rendered moot. Reconsideration and withdrawal of this rejection is respectfully requested.

#### Rejections under 35 U.S.C. § 101

Former claims 1-7, 13 and 17 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter as encompassing untransformed plants and seed. The newly presented claims are directed to methods and are thus not directed to non-statutory matter. In view of the cancelled claims and the newly presented claims, Applicants believe this rejection has been rendered moot. Reconsideration and withdrawal of this rejection is respectfully requested.

#### Rejections under 35 U.S.C. § 102(b)

Former claims 1-18 were rejected as being anticipated by *Tjaden et al.* (hereinafter "Tjaden").

Tjaden does not anticipate the subject matter of newly presented claims 19-40. The reference does not teach a method of transformation of plant cells, plant tissue or plants in which changes in an ATP/ADP translocator gene in the transformed plant cells, plant tissue or plants modify amino acid content. Tjaden does not mention that changes in gene expression of the

Application No. 10/088025  
Amendment dated December 16, 2005  
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Docket No.: 13311-00001-US

translocator gene in transformed plant cells, plant tissue or plants affects the amount of at least one (or more) amino acid(s) synthesized in the transgenic plant cells, plant tissue or plants. There is furthermore no mention of the use of the translocator gene in order to increase the amino acid content of the transformed plant cells, plant tissue or plants.

Reconsideration and withdrawal of this rejection is respectfully requested.

### CONCLUSION

For at least the above reasons, Applicants respectfully request withdrawal of the rejections and allowance of the claims.

Accompanying this response is a petition for a one month extension of time to and including December 19, 2005 to respond to the Office Action mailed August 18, 2005 with the required fee authorization. No further fees are believed due.

If any additional fee is due, please charge our Deposit Account No. 03-2775, under Order No. 13311-00001-US from which the undersigned is authorized to draw.

Respectfully submitted,

By   
Roberte M. D. Makowski, Ph.D.

Registration No.: 55,421  
CONNOLLY BOVE LODGE & HUTZ LLP  
1007 North Orange Street  
P.O. Box 2207  
Wilmington, Delaware 19899  
(302) 658-9141  
(302) 658-5614 (Fax)  
Attorney for Applicants